

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DARRELL HARPER §
v. § CIVIL ACTION NO. 6:14cv496
INTERNAL REVENUE SERVICE §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Darrell Harper, proceeding *pro se*, filed this lawsuit complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The sole named defendant is the Internal Revenue Service.

Harper asserts that his tax returns were audited between 2005 and 2010, apparently in retaliation for his having filed employment discrimination complaints. He also complains about his tax dollars being used to bribe judges to incarcerate him for filing these discrimination complaints and says that tax dollars do not permit government corruption because federal judges cannot act as attorneys. Harper seeks \$100,000,000.00 in damages.

After review of the pleadings, the Magistrate Judge issued a Report recommending that he lawsuit be dismissed. The Magistrate Judge observed that in order to sue the Internal Revenue Service, an agency of the United States Government, there must be a waiver of sovereign immunity. The Internal Revenue Code contains a conditional waiver of sovereign immunity, but Harper failed to show that he met any of the conditions, which include exhaustion of administrative remedies, mitigation of damages, and a two-year statute of limitations, which has obviously expired inasmuch as Harper complains of the years 2005 through 2010 and he filed his lawsuit in 2014.

In addition, the Magistrate Judge observed that Harper is an inveterate filer of frivolous litigation and has been sanctioned on at least two occasions by the Fifth Circuit Court of Appeals. Under the terms of these sanctions, Harper is barred from filing any pleadings in the Fifth Circuit or the courts subject to its jurisdiction until those sanctions are satisfied, which he has not done. The Magistrate Judge therefore recommended that the lawsuit be dismissed as frivolous and as barred by the sanctions imposed by the Fifth Circuit.

In his objections, Harper states that “it is believed that defendant Internal Revenue Service executed a legal scandal that permitted the infractions of malfeasance and official oppression to be in a consistent conflict that were [sic] unable to protect plaintiff’s constitutional rights from the history of discrimination the State of Texas has, as amended.” He does not allude to the sanctions nor to the shield of sovereign immunity. Harper’s objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this case, including the Report of the Magistrate Judge and the Plaintiff’s objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff’s objections are without merit. It is accordingly

ORDERED that the Plaintiff’s objections are overruled and the Report of the Magistrate Judge (docket no. 12) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as frivolous and as barred by the sanctions imposed by the Fifth Circuit. It is further

ORDERED that the Clerk shall send a copy of this order to the Administrator of the Strikes List for the Eastern District of Texas. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 24th day of September, 2014.



LEONARD DAVIS
UNITED STATES DISTRICT JUDGE